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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,640	08/27/2007	Alain Georges	DBT-006PCTUS1	4084
7590 Alan R Loudermilk LOUDERMILK & ASSOCIATES Post Office Box 3607 Los Altos, CA 94024-0607				
EXAMINER				
DONELS, JEFFREY				
ART UNIT		PAPER NUMBER		
2832				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/541,640

**Applicant(s)**

GEORGES ET AL.

**Examiner**

Jeffrey Donels

**Art Unit**

2832

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7 and 8 is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 July 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/C)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_
- Paper No(s)/Mail Date 20090106

## **DETAILED ACTION**

### ***Information Disclosure Statement***

The information disclosure statements have been considered; however, several items listed have not been considered, as the publication dates have not been provided.

### ***Double Patenting***

Claims 1-6 of this application conflict with claims 1-6 of Application No. 10/541,536. 37 CFR 1.78(b) provides that when two or more applications filed by the same applicant contain conflicting claims, elimination of such claims from all but one application may be required in the absence of good and sufficient reason for their retention during pendency in more than one application. Applicant is required to either cancel the conflicting claims from all but one application or maintain a clear line of demarcation between the applications. See MPEP § 822.

Claims 1-6 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-6 of copending Application No. 10/541,536. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-4 are rejected under 35 U.S.C. 102(a) as being fully met by Iwamoto et al (USP 6835884).

Regarding Claim 1, Iwamoto discloses a system for composing music with musical template data comprising generating a music data file (Col. 5 lines 20-25); broadcasting the music data file from a base station 4 to one or more of a plurality of nodes (Fig. 1); receiving the music data file at one or more of the plurality of nodes (Fig. 1); extracting musical definition data from the music data file, wherein the musical definition data provides information regarding a song data structure and data for musical parameters in accordance with the song data structure (Fig. 2 S11); processing the musical definition data, wherein a song in accordance with the song data structure and the musical parameters is generated by the one or more of the plurality of nodes (S12); and

playing the generated song at the one or more of the plurality of nodes 31.

Regarding Claim 2, Iwamoto discloses a transmitter/receiver, wherein the transmitter/receiver transmits and receives data from/to one or more second systems remote from the system, wherein the data received by the system includes at least a music data file (Col. 7 lines 28-50);

a music generation device, wherein the music generation device executes at least a music generation algorithm, wherein musical rules are applied to musical data in accordance with the music generation algorithm to generate music output for one or more musical compositions (Fig. 2);

a memory 71, wherein at least the received music data file is stored in the memory; wherein, musical data is generated based on data from the received music data file, wherein the music generation device generates the musical composition based on the received music data file 31.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 5,6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iwamoto et al.

Iwamoto (applied in a similar manner as above) discloses all features claimed, but does not explicitly disclose transmitting a musical data file as part of or part of initiating a telephone call.

Official Notice is taken that transmitting a data file as part of or part of initiating a telephone call (e.g. an attachment to a text message, MMS, or in a dial-up modem connection) would have notoriously old and well-known to one of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art to adapt the teachings of Iwamoto with such teachings, so as to allow the user of a cell phone or other phone-equipped device to be able to use the music-generating of Iwamoto.

#### ***Allowable Subject Matter***

Claims 7-9 are allowed.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The other references cited show related teachings in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Donels whose telephone number is (571)272-2061. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Elvin Enad can be reached on 571-272-2800 ext 32. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jeffrey Donels  
Primary Examiner  
Art Unit 2832

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